

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**RE: PETITION OF BAY STATE GAS COMPANY  
FOR APPROVAL OF REVISED TARIFFS**

**DTE 05-27**

**INITIAL BRIEF OF LOCAL 273, UTILITY WORKERS UNION OF AMERICA**

Charles Harak, Esq.  
Counsel for Local 273  
77 Summer Street, 10<sup>th</sup> floor  
Boston, MA 02110  
617 988-0600 (ph)  
617 523-8028 (fax)  
charak@nclc.org

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## **I. INTRODUCTION AND STATEMENT OF THE CASE**

On April 27, 2005, Bay State Gas Company (“Bay State” or “Company”) filed a set of proposed new tariffs along with a request for approvals of (i) a performance-based regulation plan (“PBR”), (ii) a steel infrastructure replacement program (“SIR”) and cost-recovery mechanism, (iii) a pension and post-retirement benefits other than pension (“PBOP”) cost-recovery mechanism, and (iv) recovery of costs relating to its Metscan meter-reading system. In its initial filing, the Company stated that it is seeking “an increase of \$22,238,326” in its rates, Exh. BSG-SHB-1, p. 4, although much more money is at stake for ratepayers given the SIR and other approvals sought. As Bay State notes, it has not been before the Department in a contested proceeding for a general increase in its base rates since 1992, in DPU 92-111. Exh. BSG-SHB-1, p. 8. However, and of great relevance to many issues discussed in this brief, the Department much more recently approved Bay State’s merger with what was then Northern Indiana Public Service Company, or “NIPSCO” (now NiSource) in DTE 98-31 (1998).

Local 273 of the Utility Workers Union of America (“Local 273”) petitioned to intervene in this case on May 17, 2005, and was granted full intervenor status on May 24. Local 273 is the collective bargaining agent for approximately 200 of Bay State’s “physical”<sup>1</sup> and clerical workers in the Company’s Brockton division. Local 273 Petition to Intervene, ¶1. Local 273 has long been a vocal critic of declines in the service quality provided to Bay State’s customers resulting from Bay State’s merger with NiSource, both through formal intervention or comments

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<sup>1</sup> Both the Company and Local 273 routinely refer to the employees who conduct maintenance, install and repair lines, and carry out other services as “physical” workers.

filed in past proceedings<sup>2</sup> and through other communications with the Department<sup>3</sup>.

Local 273 sponsored the testimony of Nancy Brockway, Exh. UWUA-4, and a panel of three witness, Kevin Friary, Tim Leary, and Brian McCarthy, Exh. UWUA-5. Ms. Brockway has been a member of the staff of the Maine Public Utilities Commission; a staff attorney, Assistant General Counsel, and General Counsel at the Massachusetts Department; a Commissioner of the New Hampshire Public Utilities Commission; a member of numerous NARUC committees; and a long-term advocate for the interests of low-income consumers. Exh. UWUA-4, pp. 1-2. She thus is familiar first-hand with the responsibilities that Commission's carry out in regulating distribution companies and with the interests of consumers. Her testimony addresses several issues, including Bay State's failure to provide prudent management; Bay State's poor customer service (especially telephone service); weaknesses in Bay States low-income policies and energy efficiency programs; the Metscan investment; and staffing levels.

The Friary/Leary/McCarthy panel of witnesses provided first-hand witness testimony regarding the Company's decision to outsource line locating services in the Brockton area to Central Locating Services, and the consequences of that decision.

Local 273 will demonstrate in this brief that Bay State's merger with NIPSCO and NIPSCO's (NiSource's) subsequent acquisition of Columbia Energy have had serious adverse consequences for Bay State's operations and its customers, continuing to the present day.

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<sup>2</sup> See, e.g., Comments of Local 273 in DTE 05-12 (Apr. 20, 2005) and Brief of Local 273 filed in the Company's financing case, DTE 02-73 (Dec. 23, 2002).

<sup>3</sup> See, e.g., letters from Local 273 to then-Chairman Vasington dated April 16, 2003 and May 20, 2003, provided in response to DTE-UWUA 1-7.

During the period since the Bay State-NIPSCO merger was approved and continuing through approximately 2003: (i) there was a serious decline in investment in Bay State's infrastructure, including in the very steel infrastructure for which the Company now seeks extraordinary rate relief, and a substantial increase in safety-related leaks; (ii) serious declines in telephone service quality and other customer services, resulting in substantial fines and commission-ordered management audits for Bay State's affiliate Northern Utilities; (iii) virtual decimation of the Company's sales Department; and (iv) massive staff reductions that only exacerbated the problems just described. In short, NiSource, the parent company, has been bleeding its Massachusetts operating company to deal with the heavy debt burden it took on when it acquired Columbia and to carry out strategic corporate goals that focus too heavily on shareholder returns and too little on the needs of Massachusetts customers.

While many of the key expenditure, staffing and performance indicators improved in 2004, this should be seen for what it is: a fairly transparent attempt by the Company to pump up test-year figures in order to obtain more favorable rate relief in this case.

This case presents the Department with the opportunity and obligation to carefully review the adequacy of Bay State's management and to send a signal that even a relatively small local distribution company owned by a large out-of-state holding company must fully comply with its obligations to provide high-quality service to customers. As argued below, the only feasible way to do so is to set the allowed rate of return for common equity at the lowest end of the range of reasonableness for such returns.

Much of the brief that follows (section IV) will address the many failings of Bay State's management, including: poor telephone service; the outsourcing to Central Locating Service of

the line-locating function in the Brockton division and the resulting tragic explosion in Attleboro that killed two people; and its sub-par service to low-income customers in comparison to what other Massachusetts companies offer. Local 273 argues that these failings fully support its request that Bay State be awarded the lowest reasonable return. Prior to its discussion of rate of return, however, Local 273 addresses (section II) the Company's significant failings in responding to information requests Local 273 submitted, including the Company's inexplicable failure to comply with the Hearing Officer's order to provide responses to all outstanding Local 273 discovery no later than August 15. Section III highlights the Company's lack of candor with the Department, both in prior proceedings and the present one.

Following Local 273's argument that Bay State be awarded the lowest reasonable rate of return (section IV), Local 273 urges the Department to implement the long-standing mandate of the Restructuring Act to establish benchmark staffing levels, at least to the extent of prohibiting Bay State from cutting its staffing levels any further until the Department establishes firm, numerical benchmark staffing levels for Bay State that will protect service quality and that will actually be enforced (section V). In section VI, Local 273 calls upon the Department to open a management audit of Bay State. Local 273 then addresses two cost of service issues in section VII: the excessive costs of the largely-vacant Westborough headquarters, and the excessive amount of the compensation paid to high-ranking NiSource executives that is allocated to Bay State customers. Finally, in section VIII Local 273 urges the Department to reduce the Company's request for recovery of Metscan costs.

## **II. BAY STATE SUBSTANTIALLY FAILED TO ANSWER LOCAL 273's DISCOVERY IN A TIMELY MANNER**

Local 273 served the Company with 131 information requests ("IRs"). It sent its first set of IRs on June 14, expecting that virtually all of those IRs would be answered by the start of hearings on July 5. It served its last IRs on June 21 which, under the 10-day turnaround required by the June 13, 2005 "Ground Rules," should also have been answered by the start of hearings.

While all of Local 273's IRs should have been answered on or before July 2 under the Ground Rules, in fact very few were. As of July 2, 49% of the first-set IRs, 68% of the second set IRs, and 39% of the third-set IRs were not answered. (The fourth set included only one IR, which also was not answered as of July 2). Tr. 38. While the Company produced a large volume of responses over the July 4<sup>th</sup> weekend, a large percentage of Local 273's IRs still remained unanswered when hearings began on July 5: 40% of Set 1, 63% of Set 2 and 35% of Set 3 were still not answered. Tr. 38. In addition, even as to those IRs that were technically answered, the Company had only provided Local 273 with three of its 131 IRs in hard-copy by the morning of July 5. Tr. 38. The rest of the responses to Local 273's IRs had been served electronically, intermingled with the large numbers of other IRs served, and posted on the Company's web site. Notably, the Company did not organize its web site in a manner that allowed a party to find answers to its own IRs unless the party somehow knew the date the answer was served. Tr. 39.

After the start of hearings on July 5, Local 273 continued to note the Company's ongoing failings to respond to its IRs. There is little reason to note the many places in the record that Local 273 formally complained of the continuing problems with discovery responses; it will suffice to note that these problems continued through the very last day of hearings and beyond.

On August 11, Local 273 reluctantly made a motion to compel responses to IRs and record requests (“RRs”) that were still outstanding “so . . . there will be a **date final** by which the parties know whether they have the information they need to write their briefs.” Tr. 4039-4040 (emphasis added). The Hearing Officer, who had been very patient with the Company’s tardiness throughout the hearings, granted the motion to compel (Tr. 4041) and set August 15 as the final date for responding to all of Local 273’s unanswered IRs and RR’s.<sup>4</sup> Even in the face of a clear order compelling discovery responses, the Company still did not comply. The Company did not respond to IR 2-11 until August 17, more than 7 weeks after the answer was due under the Ground Rules and two days after the August 15 deadline set by the Hearing Officer.

This review of the Company’s failings gives rise to three points. First, Local 273’s ability to fully participate in the case was prejudiced. It is difficult enough to participate in a proceeding with some two dozen days of hearings in the space of five weeks, without the added burden of not having discovery in hand when the relevant witnesses take the stand. The Company’s initial filing in the case filled five large volumes representing the testimony of nine witnesses, and parties had a real and justified need to conduct significant amounts of discovery.

Second, Local 273 has never suggested that the Company’s failure to answer discovery is the result of bad intent,<sup>5</sup> as intent is simply not the relevant issue. Rather, the issue is management’s competence. Bay State had been considering the filing of this case since the

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<sup>4</sup> At the August 11 hearing, the Company offered to answer all outstanding IRs within a day (Tr. 4041), but Local 273 agreed to an August 15 deadline when the Company pointed out that some of the RRs (but none of the IRs) were only recently posed. Tr. 4042-4043.

<sup>5</sup> See, e.g., Tr. 40 (“I don’t assume any of this is bad intent . . . But Local 273 has the right to its discovery before it is required to proceed.”)

spring of 2004, a full year before it actually filed. While it has the right to take all the time it deems necessary and to retain all the experts it deems appropriate for preparing its case, it also has the obligation to arrange for adequate staff and other resources to answer discovery in a timely manner, particularly because intervenors have much less time to prepare their cases.<sup>6</sup> The Company is apparently seeking well over \$1 million for rate case expenses. It is obliged to act prudently and devote an adequate portion of its resources to make sure that intervenors are not prejudiced as a result of untimely answers to discovery.

Third, the fact that other parties served large numbers of IRs on the Company cannot serve as an excuse for Bay State failing to answer Local 273's IRs in a timely manner. Again, prudent management is obliged to marshal the resources necessary not only for preparing the Company's direct case but for answering discovery as well. The Company's failure to do so should be one of the many factors the Department considers in setting the allowed return on common equity.

### **III. THE COMPANY'S LACK OF CANDOR WITH THE TRIBUNAL SHOULD BE CAREFULLY CONSIDERED BY THE DEPARTMENT**

In this section, Local 273 will demonstrate important ways in which Bay State has not been candid with the Department. It is now incontrovertible that the Company was not candid in its last major proceeding before the Department, DTE 98-31 (the NIPSCO-Bay State merger case), and that the Company misled the Department as to material facts. In any rate case, the Department is being asked to form opinions and conclusions about the petitioning company's conduct in future years – its likely future staffing patterns, O&M expenditures, capital

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<sup>6</sup> For example, the initial "Procedural Schedule" in the case was not announced until June 10 but required intervenors to file all discovery by June 20.

investments and service quality, as rates are set on the expectation that test year expenditures and efforts are in fact representative of the future. It is therefore critical for the Department to have a good sense of how candid the petitioning company has been in its rate case presentation and how much the Department can expect that future expenditures and efforts will in fact be consistent with the Company's test year results.

Clearly, the Company misled the Department when it sought approval for its merger with NIPSCO (now NiSource). In DTE 98-31, Bay State witness James Simpson made a number of important representations that turned out to have little to do with reality. For example, Mr. Simpson testified that:

- utility operations "will not be affected by any merger;"
- "Bay State's management structure and organizational structure will remain intact;"
- the merger would lead to significantly increased sales.<sup>7</sup>

The Department relied on these representations in approving the merger plan. Specifically, the Department noted the Company's representations that the merger was not a combination "that would require employee reductions at either Bay State or NIPSCO Industries in order to generate lower costs and greater short-term earnings;" that Bay State "would use . . . the existing workforce to increase throughput and improve service to customers;" and that Bay State would "maintain its Westborough headquarters." DTE 98-31 (1998), pp. 49-50. The Department added that it "does not lightly regard the effect of mergers on employment;" noted NIPSCO's "express intent to avoid layoffs at Bay State;" and "conclude[d] that neither the

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<sup>7</sup> Mr. Simpson's testimony in DTE 98-31 is summarized and quoted in the testimony of Nancy Brockway, Exh. UWUA-4, pp. 21, 29-30.

Preferred Merger nor the Alternative Merger would significantly affect Bay State's workforce." *Id.*, pp. 50-51.

In hindsight, either Mr. Simpson was not telling the truth, or NIPSCO was not keeping this high-ranking Massachusetts-based executive informed of key corporate plans. Once the merger took place, massive staffing cuts were implemented. The Westborough headquarters, while nominally "maintained" (*see* DTE 98-31, p. 50), dwindled from 190 staff in 1998 to 22 in 2004, an almost 90% decline. Exh. UWUA 1-1(B). Regarding Bay State's representations that it would "take advantage of attractive opportunities . . . for business growth and expansion" by "design[ing] and implement[ing] . . . marketing programs,"<sup>8</sup> it instead slashed its sales force by over 50% between 1998 and 2003 (Exh. UWUA 1-21); eliminated the assistance it used to provide customers seeking to install new gas service (Tr. 486-487); and utterly failed to set sales goals for three straight years, 2002 to 2004 (Tr. 2014-2015; Exh. UWUA 1-23(c)). Not surprisingly, in those same years revenues from new sales tumbled from \$3.6 million (2002) to \$2.5 million (2004). Exh. UWUA 1-23(c).

As Ms. Brockway noted, Bay State's post-merger operations stand in stark contrast to the representations the Company made in order to obtain approval for the merger:

Q: Has Bay State honored these commitments it made [in the merger docket]?

A: No. As I have testified, Bay State reduced staff, closed local facilities, allowed its call center performance to deteriorate (at times to shockingly low levels) . . . .

.....  
Q: What in fact has been the merged Company's record of promoting system expansion?

A: Once the merger took place, the Company dropped its efforts to expand its system and sign up new customers. The Company cut its sales staff for the three New England

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<sup>8</sup> Exh. UWUA-4, p. 29.

states. In 2002, the firm reduced field sales staff [and] reduced total sales-related staff to 24 . . . . In 2003, the Company eliminated all field sales staff, two account representatives, and the commercial sales manager, dropping sales-related staff to 17. While the Company has since slowly added back some sales personnel, the staffing level for such activities remains at about 2/3 the level before the merger with NiSource.

Exh. UWUA-4, pp. 21, 29-30.

The relevance of the Company's lack of candor is not only limited to the past. In this case, as in any rate case, the Department has to have some confidence that the test year expenses and levels of effort are reasonable predictive of what will occur in the "rate year," that is, the year that any new rates will go into effect — and beyond. In this case, there is strong evidence that the test year expenses are not representative but in fact have been artificially inflated to bolster the Company's rate request.<sup>9</sup>

For example, the Company's capital expenditures in the four-year period 2000 to 2003 (that is, following the approval of the merger) were significantly lower than the capital expenditures for the four-year period 1996 to 1999, despite the fact that Bay State has consistently cited the urgent need to replace its aging infrastructure. During the 2000 to 2003 period, capital investment averaged only \$30.5 million, a 35% decline from the average of \$46.9 million spent annually from 1996 to 1999. Exh. UWUA-4, p. 24; Tr. 1637-1638. Yet capital expenditures jumped by one-third from 2003 to 2004, the latter year being the Company's test year. Tr. 1638. The Department should be very concerned that Bay State evinces a pattern of sharply cutting expenditures and staffing when it is under a rate freeze, then suddenly ramping

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<sup>9</sup> The Hearing Officer raised a similar concern during the July 6 hearing, *i.e.*, that the Company's SIR proposal might be as motivated by the lifting of the rate cap as by other factors: "MS. BULGER: So I'll just mention the elephant that's in the room: So your proposal for the SIR program is in no way related to the fact that you are now here for a rate case and you just came off a rate freeze." Tr. 313-314.

up expenditures and staffing just before it files a rate case. This concern should be heightened here, where the Company is seeking approval for PBR and SIR programs that could keep Bay State from having its rates and expenditures closely scrutinized for years to come.

Just as capital expenditures tumbled during the 2000 to 2003 post-merger period, so did staffing levels. In 1998, when the Department approved the NIPSCO-Bay State merger, the head count was 811 and declined steadily through 2003, reaching a low of 509. But staffing actually increased by 42 in 2004, no doubt because 2004 is the test year. Exh. UWUA 1-1(A). Thus, as Ms. Brockway noted, “the test year is unrepresentative of the historic trend of employment in recent years. . .” Exh. UWUA-4, p. 33.

There is one more critical area where the Company has been less than fully candid with the Department, and that is in terms of NiSource’s plans to outsource key Massachusetts-based functions including the call center and billing work. On the one hand, it has been clear for months that NiSource intends to outsource over 1000 jobs throughout its system, including more than 100 billing and call center jobs in Massachusetts alone, in connection with the outsourcing contract it signed with IBM. *See, e.g.*, Affidavit of Kevin Friary, attached to Local 273 Motion to Preserve Status Quo (June 11, 2005), as well as “NiSource Outsourcing Fact Sheet, April 29, 2005” and “May 24, 2005 Dear Colleague” letter appended to the Friary affidavit. NiSource has publicly boasted in the press of its intent to reach new heights in terms of outsourcing by a utility company. *See, e.g.*, “NiSource and IBM sign agreement to transform key business process and technology functions,” press release dated June 21, 2005 (filed by the Company on June 21). Also on June 21, 2005, Jovette Pino, a Director of Human Resources and Labor Relations for NiSource, contacted Local 273’s president regarding outsourcing “discussions” the two parties

had “over the past several months” and explicitly noting the Company’s consideration of “outsourcing of billing exception and payment processing work currently performed by members of Local 273.”<sup>10</sup> The Pino letter specifically notes that “we anticipate the elimination of certain work due to the introduction of new technology and process changes.”

On the other hand, Bay State has attempted to portray the contract with IBM as having no identifiable impact on staffing levels at Bay State, as if the Company and its unions were on equal footing and will resolve these issues through negotiations, whereas nothing could be further from the truth. As late as June 20, in papers signed by its attorneys, the Company represented to the Department that “an agreement with IBM has not been reached;” that the “outsourcing initiative is by no means final at this point;” and that “the reductions are in fact not imminent.” *See* Opposition of Bay State Gas Company to the Motion of Local 273 to Preserve Status Quo (June 20, 2005), pp. 3, 10.<sup>11</sup> In fact, at that point the Company had been engaged for months in the hunt for an outsourcing contractor; had already informed its employees on April 29, 2005 that it had “selected IBM as the business process service provider . . . to outsource business support activities;”<sup>12</sup> and had begun collecting information from “employees” who

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<sup>10</sup> The Pino letter is attached to Local 273 Motion to Allow Reply and Reply to Company’s Opposition to Motion to Preserve Status Quo (June 21, 2005).

<sup>11</sup> Local 273 found the statement that “an agreement with IBM has not been reached” so patently misleading that counsel for Local 273 contacted Company counsel and suggested that the Company had an obligation to correct the record. The Company in fact made a corrective filing on June 21, which included the formal announcement of the signing of the IBM contract.

<sup>12</sup> “NiSource Outsourcing Fact Sheet, April 29, 2005,” Attachment A to Local 273 Motion to Preserve Status Quo (June 13, 2005).

might be “affected” by “job eliminations.”<sup>13</sup>

Thus, the Department should have no illusions about what is about to occur. Despite the efforts of the Company to make it appear that much is still unresolved, it is certain that NiSource’s goal is to outsource as many jobs as possible, including all the work done at the Springfield call center and Brockton billing office. The only thing that stands in NiSource’s way is not Local 273 or the Steelworkers union, as the Company has no intention of receding from its plans; rather it is only the willingness of the Department to insist on maintaining service quality and setting the benchmark staffing levels required by law that will deter NiSource from outsourcing the jobs of more than 100 Massachusetts-based workers.<sup>14</sup>

#### **IV. THE DEPARTMENT SHOULD SET BAY STATE’S RETURN AT THE LOWEST END OF THE “RANGE OF REASONABLE RATES”**

##### **A. The Department Has the Discretion to Consider “Subpar Management Performance” When Setting the Rate of Return**

It is well established both in case law and the Department’s own precedents “that fixing the fair rate of return is a matter of judgment, not a mechanical exercise” and that the Department has the discretion to chose “from a range of reasonable rates.” *Boston Edison Co. v. DPU*, 375 Mass. 1, 11-12 (1978). It is rare, if not unprecedented, for the Supreme Judicial Court to find that the Department has set the rate of return on common equity below the “line of confiscation” (*id.*, at 17) or “below the range of permissible judgment,” *Boston Gas Co. v. DPU*, 359 Mass. 292, 306 (1971). To the contrary, as these cases just cited show, the Court has

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<sup>13</sup> May 24, 2005 “Dear Colleague” letter from Robert Skaggs, President, NiSource, Attachment B to Local 273 Motion to Preserve Status Quo (June 13, 2005).

<sup>14</sup> Staffing level and outsourcing issues are fully discussed in section V of the brief.

routinely affirmed the Department's judgment regarding the setting of the return on common equity.

The Department itself takes a similar view of its discretion in setting the allowed rate of return:

[T]he Department must ultimately apply its own judgment to the evidence to determine an appropriate rate of return. We must apply to the record evidence and argument considerable judgment and agency expertise to determine the appropriate use of the empirical results. Our task is not a mechanical or model-driven exercise.

*Boston Gas Co.*, DTE 03-40 (2003), p. 363. Moreover, the Department considers a broad range of factors relating to management decisions, company performance, and revenue-recovery mechanisms in deciding where within the "range of reasonableness" the actual rate of return should be set. *Id.*, p. 364.<sup>15</sup>

In a recent decision involving Fitchburg Gas and Electric, the Department also considered that company's "subpar management performance" and concluded that the listed instances of subpar performance "require that the return on equity should be set at the low end of the range of reasonableness." *Fitchburg Gas and Electric Light Co.*, DTE 02-24/25 (2002), p. 231. As explained more fully below, there is ample evidence in this docket of Bay State's subpar management performance. The Department should set the Company's allowed return at the lowest end of the range of reasonable returns. The evidence reveals that the parent

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<sup>15</sup> In the *Boston Gas* case, the Department considered: "Boston Gas' failure to conduct adequate IRR analyses . . . to support the economics behind its capital expenditures, a need to improve cost-containment efforts in these projects, difficulties in CRIS conversion project, and a lack of competitive bidding for outside services for rate case expense." DTE 03-40, p. 364. The Department also considered the reduced financial risk the company faced due to the "pension reconciliation mechanism adopted in this proceeding" and the company's "relative risk under the ten-year PBR plan." *Id.*, p. 365.

company's corporate philosophy places cost-cutting as a very high corporate goal, even when this impacts service quality and Bay State's public service obligations. The Department must send the strongest possible signal that it will not allow Bay State's customers to suffer as a result of NiSource's desire to increase profits for shareholders.

**B. Neither Mr. Mohl Nor Mr. Newhard Considered Management Performance**

Before demonstrating that management performance has been subpar, it is important to note that neither Mr. Mohl nor Mr. Newhard (respectively, the Company's and the Attorney General's cost of capital witnesses) considered management performance or service quality when making their rate of return recommendations. Thus, their recommendations by no means reflect their opinions as to what the low end of the range of reasonable returns would be. Cross-examination of each witness makes this point abundantly clear:

Q: In each of the approaches we've discussed, you do not consider the relationship, if any, between the rate of return and quality of service. Right?

A: [Mohl] No. I've not conducted an independent analysis of the quality of service Bay State provides. That's out of my area of expertise. I just don't do that.

Tr. 1153-1154. Similarly, the Attorney General's witness did not incorporate any consideration of management competence or operational imprudence in making his rate of return recommendation:

Q: Now, is it true . . . that either the 8.66 you've actually recommended, or perhaps closer to the midpoint that you might recommend if the facts were a little different, that either of those numbers does not include any reflection or adjustment for the quality of the company's management, is that correct?

A: That's correct.

Q: So if the Department were . . . to find that Bay State . . . has deficient management that harms customers, that would be a separate adjustment the Department would have to make after accepting your testimony, is that correct?

A: I have seen the Department make adjustments to the cost of equity for imprudence, and I guess on their part, on the part of company management; and if you equate imprudence with incompetence, you could make that type of adjustment.

Tr. 2847-2848 [Cross-examination of Timothy Newhard].

**C. The Company's Performance Has in Fact Been Subpar**

Local 273 witness Nancy Brockway strongly recommended "that the Department set the Bay State allowed return on equity at the low end of the range of reasonable returns." Exh.

UWUA-4, p. 62. She based this conclusion on a number of factors, including Bay State and/or

NiSource:

- "outsourc[ing] crucial safety functions, returning them to direct control only when tragic consequences underscored the risk of such an approach;"
- "plung[ing] itself into debt in order to pursue a strategic merger of no benefit to Massachusetts consumers;"
- failing to provide "adequate staffing and investment;"
- compromising "call center performance [and] system expansion;"
- failing to meet "its public service obligations to low-income customers;" and
- "plunging into a massive outsourcing project, at a time when the industry is assessing the pros and cons of such deals."

Ux. UWUA-4, p. 63. As Ms. Brockway notes:

Only when risks become realities, or regulators crack down, or when the Company needs the cooperation of regulators (as in the present rate case), does the Company reverse course and address its staffing and investment needs for Massachusetts. This pattern will persist **unless the Department sends a strong message to the Company that it may not expose its Massachusetts consumers to such risks.** Setting the rate of return at the low end of the range of reasonableness will demonstrate that poor management has consequences.

Exh. UWUA-4, p. 64 (emphasis added). The remainder of this sub-section will detail the ways

that management has eroded service quality and failed in its public service obligations and conclude with a recommendation for setting the allowed rate of return no higher than 8.16%.

**1. The Company's Telephone Service Has Been Inferior**

Steve Bryant, Bay State's President, aptly summed up the problems with the Company's telephone service in a January 21, 2003 e-mail to Virginia Anthony, the Company's manager of customer relations, regarding the Springfield, Massachusetts call center:

Your assessment of the improvement in the training for reps in the call center is good news. The bad news is that **all the training in the world does not make up for lack of staff**, and lack of staff will be pat's<sup>16</sup> [sic] continuing #1 problem.

Exh. UWUA 1-2(D), Page 1 of 24 (emphasis added).

There can be no doubt that Bay State cut its call center staff far too deeply and that telephone service suffered seriously as a result. The record is also clear that Massachusetts customers suffered relative to New Hampshire and Maine customers of Northern Utilities, Bay State's affiliate, because New Hampshire and Maine regulators were far more responsive to these problems and demanded better results in their states. Massachusetts must reverse this dynamic and be at least as aggressive as regulators in these other states served by Bay State/Northern.

Mr. Bryant is, again, the most authoritative source to demonstrate that staffing in the call center fell below acceptable levels:

Q: [Y]ou testified . . . the other day that at some point the call-center staffing . . . [was] too low or needed to be increased; is that correct?

A: That is correct.

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<sup>16</sup> This is an apparent reference to Pat Teague, "the call-center manager for Bay State Gas and Northern Utilities" who testified on August 4. Tr. 3121-3122.

Tr. 1625.<sup>17</sup>

Jody Ajar was a witness in this case for the United Steelworkers Union of America (“USWA”). She is a Senior Universal Representative and long-time employee at the Springfield call center, and more fully detailed the staffing problems at that center:

From winter 2000 to spring 2003, the Call Center lost a significant portion of its staff due to attrition and transfers. This was compounded by NiSource ordering a hiring freeze around the same time, announced by Gary Neale [NiSource’s CEO] on December 7, 2001. . . .Staffing in the Call Center went from almost 70 full time employees to the low fifties. As a result, there was a serious shortage of staff at the Call Center. . . . More importantly, service, billing, and credit representatives were being forced to take all types of calls by their managers, even though they hadn’t been trained to take all calls and had no way of responding appropriately to the calls. CSRs were bluffing their way through calls.

Exh. USWA-1, p. 4.

As shown in Exh. UWUA 1-1(C), Springfield call center staffing peaked at 87 in 2000, plummeted to 62 in 2002, and has slowly been brought back to 76 to 78.<sup>18</sup> As noted in Exh. DTE-UWUA 1-7, Local 273 had conversations “with NHPUC staff [confirming that] Bay State/Northern simply had too few staff available to answer a sufficient percentage of calls within 30 seconds during the beginning of 2003.”<sup>19</sup>

The staffing cuts had a severe impact on telephone response at the call center. From January through May 2003, Bay State never answered even 60% of its calls in 30 seconds; in

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<sup>17</sup> See Tr. 3126 (Teague testimony)(“There’s been periods of time when the call center was understaffed”); Tr. 3127 (center understaffed late 1999/into 2000); Tr. 3130 (understaffed in February 2002; request for additional staff not fulfilled “until around July or August of that year”).

<sup>18</sup> While the precise staffing levels have been presented somewhat differently in various documents produced by the Company, the overall trend is the same in all of those documents.

<sup>19</sup> As Exh.DTE-UWUA 1-7 also notes, Local 273 conveyed this information to the Department in a letter dated April 16, 2003, a copy of which was filed with the response.

March, it answered only 45% of calls in 30 seconds. A relatively large percentage of callers (4%) could not get through at all, but instead received a busy signal. Exh. UWUA-4, p. 9.<sup>20</sup> In addition, the average speed of answering lengthened considerably, often exceeding four minutes. *Id.* Delays became so long that customers began “calling the emergency number with non-emergency calls;” they became so frustrated at not being able to reach the call center that “they called the emergency lines, thus putting pressure on the ability to meet emergency line targets.” Exh. UWUA-4, pp. 27-28. This is a serious public safety issue, illustrating how cutbacks in areas that do not appear directly related to public safety (e.g., routine call center response) can in fact impact public safety adversely.

To make matters worse, the Company consciously chose to remove from service one of the trunk lines feeding calls to the Springfield center. USWA witness Ajar testified that there was a period of time when:

customers repeatedly [stated] that they had called multiple times, but only gotten a busy signal. . . . Customers would get a busy signal if the trunk line that they called into had been shutdown [sic].

Exh. USWA-1, p. 10. The Company had in fact informed Ms. Ajar that at least one trunk line was “shut off to take pressure off the call volume the Call Center was getting, but that now, the trunk lines had to be re-opened.” *Id.*

In his first day of testimony, Mr. Bryant was “not aware of the company ever shutting down trunk lines.” Tr. 226. But Mr. Bryant did agree that if a customer gets a “trunk busy” signal, the call would not be counted at all by the Company’s reporting software, Tr. 226-228, thereby skewing the reported results to make them appear more favorable. Tr. 2057-2058 (“if

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<sup>20</sup> Ms. Brockway noted that this “busy” rate is usually 1/10 of 1%. *Id.*

the company doesn't have enough trunk lines . . . customers get a busy signal . . . [and] those calls don't reach the denominator of the telephone service factor"). Similarly, Ms. Teague could only recall "a rumor that went around" that a trunk line had been removed from service. Tr. 3155.

Ultimately, however, Mr. Bryant looked into the matter more thoroughly and learned that:

. . . there was a consultant hired who looked at the call traffic in 1998 and suggested that . . . there might have been an imbalance between the number of employees in the call center and the number of trunk lines coming into the call center. . . . [T]he officer responsible for the call center may have reduced the number of trunk lines . . . I would assume that if a decision was made in late 1998 or 1999 to reduce the number of trunk lines, I would assume that that stayed in place until such time as Ms. Teague and I and others made a determination that we found the Springfield call center to be deficient in trunk lines and added lines, and I believe that was 2002.

Tr. 3296-3298. In quite simple terms, when Bay State learned that customers could not get through on the phones because there were not enough employees to answer the calls, it chose not to add more employees but instead to eliminate a trunk line so that the callers would get a "fast busy signal" and give up trying to get through at all.

This is nothing less than reckless cost-cutting that places public safety at risk and undermines accurate reporting of telephone response, as Local 273 witness Ms. Brockway, herself a former state regulator, testified:

Q: Should a utility ever shut down its trunk lines?

A: No.

Q: Would such an action be a threat to public health and safety?

A: Yes.

Q: Would such a practice distort the call-answering-time statistic?

A: Yes.

Tr. 2642-2643. Customers who are not experiencing emergencies will start clogging the emergency lines when they cannot get through on the regular billing or customer service numbers, thus putting pressure on the ability to respond to true emergencies. Exh. UWUA-4, pp. 27-28.

This discussion of trunk lines highlights three critical points. First, front-line employees like Ms. Ajar often have valuable information that the Department should regularly solicit and heed. The Department would never know of the removal of the trunk line if Ms. Ajar and USWA had not been so persistent in raising this issue. Second, the Company's removal of the trunk line from service because of an "imbalance" between incoming calls and available staff shows how the corporate goals of cutting costs and avoiding hiring dominate over all other considerations, including service quality and public safety.<sup>21</sup> Third, the Department needs to monitor Bay State's operations much more closely, at least as closely as New Hampshire and Maine regulators have done with Bay State's affiliate Northern Utilities.

A fundamental problem for Bay State's customers is that the Massachusetts-based executives who nominally run the company have relatively little authority, in comparison to executives at many other companies the Department regulates, and cannot on their own increase staff, even at the relatively low level of adding front-line customer service representatives. A March 11, 2003 e-mail from Mr. Bryant to Violet Sistovaris at NiSource illustrates how even Bay State's highest-ranking Massachusetts executive must implore NiSource for modest

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<sup>21</sup> Local 273 again addresses this issue of cost-cutting goals predominating over public safety concerns in its discussion of the Attleboro explosion, section IV.C.2., *infra*.

additional resources:

I am (again) concerned that the performance in Springfield is drawing the attention of all three Consumer Divisions. In particular, the MA DTE has been fairly tolerant so far,<sup>22</sup> but once our relationship goes bad, it will stay that way for a while. Virginia [Anthony] and I have been summoned to New Hampshire to explain our performance. Pat [Teague] indicated that Springfield will not experience any benefit from the new staffing until May. My biggest fear is that one or more Commissions will suspend our right to terminate service for non-payment until such time as we can demonstrate an ability to answer the telephone within a reasonable amount of time.

Exh. UWUA 1-24(D), Page 3 of 24 (bracketed last names added).

Violet Sistovaris is the NiSource vice-president in charge of all call center operations.

Tr. 1654. It is Ms. Sistovaris, not Mr. Bryant, who decides whether there are enough employees in the Springfield call center to answer calls in a timely and efficient manner. As Mr. Bryant agreed, “there's no one within Bay State, who's employed by Bay State, who has a role in determining staffing levels at the call center.” Tr. 1656.

While Local 273 would not argue against a corporation having a reasonable chain of command in terms of hiring and resource allocation decisions, there has been a clear pattern of NiSource depriving Bay State of necessary resources, particularly since its acquisition of Columbia placed NiSource an additional \$6 billion in debt. RR-UWUA-8 (long-term debt increased \$5.75 billion in 2000). The Department must recognize that even Mr. Bryant, Bay State’s president, reports to Indiana-based masters who do not appear to have the best interests of Massachusetts customers at heart.

Other area regulators have in fact paid close heed to the fact that Bay State’s takeover by

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<sup>22</sup> By March 2003, the New Hampshire PUC was fining Northern Utilities \$5,000 per month for poor call center performance, and the Maine PUC had ordered a management audit of Northern. This explains Mr. Bryant’s reference to “the MA DTE” being “fairly tolerant.”

NiSource has adversely affected service quality, including telephone response, and have implemented appropriate responses. Maine PUC staff “conducted a study of the [Springfield] Call Center, placing on average 5 calls per day in a 19-week period . . . and found that only 40% of the trial calls got through.” Exh. UWUA-4, p. 19. The Maine PUC eventually launched a major management audit of Northern in May 2002. Exh. USWA-4. As Bay State had promised to the Department (see discussion of DTE 98-31, section III, *supra*), Northern promised Maine regulators “that the merger would not result in any change in the management of Northern and Bay State or have any material impact on the local operations of Northern.” *Id.*, p. 2. But unlike Massachusetts regulators, the Maine PUC carefully monitored post-merger service quality and acted when service quality declined:

[In late 2001/early 2002], we became aware of **call center performance problems** that could not be resolved by the Director of CAD [Consumer Assistance Division], a high level of estimated bill complaints, and **merger-related staff cuts and facilities closures**. . . It is our experience over the last two years with problems that impact customers or otherwise raise concerns about possible service quality deterioration that provides the impetus for these initiatives.

*Id.*, p. 4(emphasis added).<sup>23</sup> The Maine PUC concluded that “Northern is providing inadequate and unreasonable service to customers with regard to its call answer rate to its credit department” and established an interim call answer metric of answering “80% of all calls . . . by a live customer representative within 30 seconds.” *Id.*, pp. 13 -15.

New Hampshire regulators also responded to the plummeting telephone response rate at the Springfield call center by fining Bay State/Northern a total of \$30,000 over six months. Tr.

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<sup>23</sup> The Maine PUC similarly noted: “[W]e have become increasingly concerned, due to successive post-merger cuts in staffing levels and local facilities closures, with Northern’s ability to provide an adequate frequency of meter reads and to respond to large scale outages and other service emergencies.” *Id.*, p. 6.

2034; Exh. DTE UWUA 1-7; Exh. USWA 2-20. At one point, the NHPUC suspended the Company's ability to shut off customers because the phone system was operating so poorly, as Mr. Bryant noted in an April 7, 2003 e-mail:

The Springfield Call Center is experiencing problems with its interactive voice response system such that customers are prohibited from speaking to a live representative. Direct contact is required for customers that have made payments at a payment center to head off a shut-off for non-payment. The NH PUC has asked that we suspend shut-offs until the problem is corrected. I have agreed.

Exh. UWUA 1-2(D), Page 5 of 27.

Massachusetts regulators have long had the same information regarding plummeting telephone response rates (see letters from Local 273 to then-Chairman Vasington included in DTE-UWUA 1-7), but have yet to take any action. Interestingly, in a March 2003 e-mail, Virginia Anthony, Bay State's manager of customer relations wrote to Mr. Bryant: "I was notified that the DTE had been trying to get through today on the Company's private Credit line reserved just for Commission calls, and the line just rang and rang with no one picking it up."

Exh. UWUA 1-2(D), Pages 3-4. But even this remarkable instance apparently did not prompt any publicly-transparent action by the Department.

In terms of the ability of customers to do business with or ask questions of the Company, Bay State in June 2001 also closed all of its "walk in" centers — Company-operated premises in Brockton, Lawrence and Springfield where customers could pay bills and ask questions — in June 2001. Exh. UWUA 1-14. While Mr. Bryant tried to justify these closures on the alleged grounds that walk-in center employees had little to do, the walk-in centers in fact had over 30,000 customer contacts in the year before they closed, Tr. 2683-2684. When Maine regulators reviewed walk-in center operations, they concluded that "5 percent of Maine customers used

them exclusively as their way of paying bills.” Tr. 2662. Ms. Brockway added that “there’s a significant number of customers for whom that [i.e, doing business by phone or over the Internet] is not sufficient.” Tr. 2663-2664. Low-income customers and the elderly in particular are the ones most likely to suffer, as they may not have telephones, or are used to paying in cash, or do not have access to the Internet. *Id.* There is no question that the closing of the walk-in centers led to a significant increase in calls to the Springfield call center, Exh. USWA-1, p. 6, although the Company subsequently cut back on the hours of operation of the call center, *id.*, p. 7.

It is particularly disturbing to Local 273 that Massachusetts customers have suffered because Bay State shifted call center resources to states where regulators were demanding higher levels of service quality. Due to the monthly monitoring by New Hampshire regulators and the fines that were imposed, Bay State/Northern began to “staff lines exclusively dedicated to Northern Utilities” customers. Exh. USWA-1, p. 13.<sup>24</sup> Mr. Bryant agreed that this practice occurred, and that “call answering in Massachusetts would be slower” as a result. Tr. 1671-1672.<sup>25</sup>

It is also troubling that the Company’s reported telephone response statistics tend to understate the magnitude of the problem. For example, the most-commonly cited statistics regarding the percentage of calls answered in 30 seconds include calls that are answered solely

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<sup>24</sup> Ms. Ajar appended to her testimony an e-mail from call center manager Pat Teague calling for volunteers “interested in manning the Maine/New Hampshire credit queue.” Exh. USWA-1, appended USWA-JA-2.

<sup>25</sup> The practice of assigning specific call center employees to calls only from Northern Utilities customers began late 2001/early 2002 and lasted until December 2003. Tr. 3140-3143.

within the automated “IVR” (Interactive Voice Response) system as well as calls where the customer wants to speak directly to call center staff. As Ms. Brockway noted, “Inclusion of the IVR-handled call time at zero seconds, and thereby lowering the derived time of answering . . . probably gives an overly positive view of the experience of customers who would prefer the option of human contact.” Exh. UWUA-4, pp. 11-12. If one considers instead the statistics for response time to callers who actually want to speak to a “live operator,” Tr. 2016 (that is, excluding those seeking only automated information), the response times during the problematic first half of 2003 were appalling, ranging from 24% to no higher than 38% of calls answered in 30 seconds for the period February 2003 to May 2003. Exh. UWUA 2-13 (a). At no time during the first six months of 2003 did “% met - no IVR” exceed 55%. *Id.* & Tr. 2016. Mr. Bryant at first tried to deny that “calls where the customer wants to speak to a live operator are probably more important to the customer than the ones where they just want one of the automated responses,” Tr. 2016, and even tried to erroneously assert that a customer “would not have to reach a live operator” to “make a payment plan,” Tr. 2017. But he ultimately had to retract the latter assertion (Tr. 2018: “If the customer wants to do an ad hoc payment plan, they would have to speak to a live representative”), and his own e-mails show that live operator calls are critical to the health and well-being of customers.<sup>26</sup> There is no doubt that low-income customers cannot use IVR to “assert the protections available in Massachusetts of serious illness, winter moratorium or child under twelve months of age.” Tr. 2019. Thus, the neediest customers in the

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<sup>26</sup> As noted previously, Bay State/Northern temporarily suspended customer terminations in all three states precisely because there was a system problem “such that customers are prohibited from speaking to a live representative,” yet “direct contact is required for customers . . . to head off a shut-off for non-payment.” Exh. UWUA 1-2(D), Page 5 of 24.

most urgent situations need to reach a live operator and cannot conduct their business through the IVR.

Bay State's call answering statistics are also biased upward by its practice of making "callbacks," that is, answering customer calls as they come in during the day and counting the called as answered for reporting services, but merely taking a message at that point and calling back after normal hours to actually answer any questions. At times, Bay State has used callbacks on a daily basis. Exh. USWA-1, p. 12; Exh. UWUA-4, p. 12.

One statistic that clearly reveals the overall poor performance of the call center is "average time to abandonment," the average time a customer waits in the queue before abandoning the call. In the first half of 2003, average time to abandonment was 10 minutes or longer for four of those six months, and never shorter than 5 minutes. Exh. UWUA-4, p. 12. The number of abandoned calls jumped dramatically starting in January 2004, as graphically displayed in Ms. Brockway's testimony, Exh. UWUA-4, p. 14. During her tenure as a Senior Billing Representative, Jody Ajar "would often receive calls from customers in which they told me that they had a very hard time getting through to Customer Service" and that "they had called multiple times, but only gotten a busy signal." Exh. USWA-1, p. 9. But the most credible evidence of the problem comes from the Company itself, in a March 10, 2003 e-mail from Virginia Anthony to Steve Bryant:

Steve, I wanted to let you know that Mary James<sup>27</sup> sent me an e-mail this morning after they had received a call from a consumer who complained to them because he had waited in the queue for 15 minutes this morning in an attempt to speak with us about a billing problem. . . . I called the call center myself and waited for approximately 10 minutes . . . .

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<sup>27</sup> Ms. James appears to be on the staff of the Maine PUC.

Exh. UWUA 1-2(D), Pages 2 and 3 of 24.

The record on telephone service is quite clear. Bay State customers have received inferior service, both in absolute terms and relative to customers in Maine and New Hampshire to whom the Company at times devoted greater resources. It is also clear that the improvements in telephone service since 2003 came about directly in response to the firm actions taken by Maine and New Hampshire regulators, and from the indirect pressure from Local 273 insisting that the Department pay more attention to the quality of service that customers receive:

I want to express my strong concern regarding the continuing poor performance of the Springfield call center. . .[While] everything that can be done with existing resources is, in fact, being done, I do not think this will be sufficient to hold off regulatory action. The MA DTE is currently conducting a review of all LDCs service quality performance in 2002. Also, labor unions are continuing to lobby the DTE to investigate the impact of staff reductions on customer service levels. As a result, there is a clear awareness at the Commission level that Bay State is now, and has been for an extended period, struggling with call answering performance. The Commissioners are communicating their awareness of the problem as a subtle warning that, if we do not improve, the DTE will open an investigation.

Exh. UWUA 1-2(D), Page 12 of 24 (June 19, 2003 e-mail from Steve Bryant to Jack Partridge at NiSource). This e-mail also demonstrates that as late as June 2003, after six months of fines being levied by the NHPUC for poor telephone service, Mr. Bryant was still pleading for more resources from his NiSource superiors.

While this sub-section about telephone service is only one part of Local 273's larger argument that Bay State's subpar performance merits a return of equity at the low end of the range of reasonableness, Local 273 has some concluding observations and recommendations specific to telephone performance. First, it is abundantly clear that the Company's labor unions (and the front-line employees who comprise the union membership) play an important role in bringing valuable information to the attention of the Department, both through informal routes

that preceded the rate case<sup>28</sup> and through evidence formally introduced into the rate case itself. As the just-cited e-mail from Mr. Bryant demonstrates, Local 273's constant attention to the issue of call center performance was noticed by management and was one of the reasons Mr. Bryant so urgently petitioned NiSource for additional resources.<sup>29</sup>

Second, it is clear that Bay State's Massachusetts-based management does not have the authority to increase staffing or resources devoted to the call center, and that the parent company was very slow to respond even in the face of a management audit announced by Maine in May 2002 and substantial fines from the NHPUC beginning in January 2003.

Third, it is not sufficient for the Department to send a "subtle warning," to use Mr. Bryant's phrase (Exh. UWUA 1-2(D), Page 12), or even an overt warning regarding poor service quality, as it is clear that Bay State does not respond short of being fined or subject to a commission-ordered audit.

Therefore, Local 273 recommends the following:

1. Bay State should be required to report and comply with its telephone service factor on monthly basis, as it must do in New Hampshire (Tr. 230).
2. The Department should increase the benchmark from the current 69% of calls answered in 30 seconds (Tr. 230) to 80%, in line with New Hampshire.

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<sup>28</sup> See, e.g., the letters from Local 273 to then-Chairman Vasington provided in Exh. DTE-UWUA 1-7.

<sup>29</sup> It is worth noting that USWA, not Local 273 of UWUA, represents the call center, and Local 273's members therefore derive no personal benefit from the Company devoting more staff and resources to the call center.

**2. The Company's Zeal to Cut Costs Indirectly Contributed to the Attleboro Explosion**

On March 4, 1998, one of the Company's gas lines located at 57-59 George Street in Attleboro exploded, killing two people, injuring seven others, completely destroying the home at that address, and damaging 68 other homes. Exh. AG-2, pp. 4-5 (DTE "Incident Report, 57-59 George Street"). An employee of Central Locating Service ("CLS"), the outside contractor that had just begun performing the job of locating gas lines in the Company's Brockton division, "failed to mark the location of a gas service line correctly and . . . painted 'no gas' on the pavement close to the actual location of a gas service line." Exh. RR-UWUA-3. Due to the mis-marking, an excavating backhoe struck the line, leading to the explosion. Exh. AG-2, pp. 4-5.

The CLS employee "did not use Bay State's mapping system because he had no index" that would have allowed him to locate the proper map. Exh. AG-2, pp. 6-7. The employee also apparently did not realize that on the low-pressure portion of the Company's distribution system, there could be gas service to a house, yet the "service line [might have] no shut-off device outside the building." Exh. AG-2, p. 5-6. Because the CLS employee did not have access to Bay State's maps and did not understand that there could be service to a house without there being a visible outside shut-off device, he marked the house "no gas," with tragic results.

Local 273 asserts that no experienced Bay State employee would have made such an obvious mistake. Due to their typically large number of years of experience (*see* Exh. UWUA 1-35), Bay State employees who mark lines would be familiar with the system, know which streets have gas supply from personal experience, have full access to maps and indexes, and understand the Company's distribution system first-hand. Mr. Cote testified to the advantages of having experienced employees on staff, and on his own drew the connection to safety concerns:

Q: Could you tell me what those advantages are [of having experienced employees]?

A: Emergency response to **things like third-party damage** and underground leakage are as critical a group of skill sets, in my opinion, as exist in distribution companies. And frankly, experience in these areas is crucial. It's the difference between, **in a fairly tight time-frame situation, simply going and doing the right things — forgive me this characterization — but someone without experience not being able to execute as efficiently.**<sup>30</sup>

Tr. 2383-2384 (emphasis added).

In fact, Local 273 members had warned management that using CLS could result in more “hits” to the Company’s lines, that is, more third-party damage to those lines due to mis-marking. Three witnesses in this case, all members of Local 273 who are familiar with the Company’s distribution system and service lines — Kevin Friary, Tim Leary, and Brian McCarthy — testified about those discussions:

[Friary/Leary/McCarthy] Several Local 273 members, including all three of us, engaged in discussions with the Company about the proposal to employ Central Locating for locates in the Brockton division . . . Mr. Cote was the lead [Company] spokesperson in the discussions on this topic. At the time, he had significant responsibilities for operations in Massachusetts . . . and he played a key role in the Company proposing to go to an outside firm to perform some of the locates in the Brockton division.

We pointed out our concern that if the work was outsourced to Central Locating Service there would be more “hits” due to errors or mistakes in marking lines . . . .

[Friary/Leary] We recall Mr. Cote saying, in reply to our assertion that there could be more “hits” that this would be “a cost of doing business.” We were both struck by this answer and found it quite surprising.

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<sup>30</sup> Notably, two major factors contributed to the Attleboro explosion - the marking of “NO GAS” on a property which actually had a gas line, and the failure of those present “to [promptly] contact the police, fire dept., Bay State or even dial 911” once the line was damaged. Exh. RR-UWUA-3, p. 2. In the unlikely event that one of Bay State’s own employees would have mis-marked the line, it is clear from Mr. Cote’s testimony that “in a fairly tight time-frame situation,” that is, a ruptured gas line, they would “simply go[] and do[] the right things,” including immediately notifying the appropriate Company and public safety personnel and shutting down gas supply to the ruptured line. Tr. 2383-2384.

[McCarthy] While I cannot recall the exact words, I clearly recall Mr. Cote making a reply I found very provocative, in the sense of not taking our concern about safety seriously.

Exh. UWUA-5, p. 2.<sup>31</sup>

While this incident is now several years in the past, Mr. Cote currently plays a prominent role in Bay State's operations. He is the General Manager of Bay State and, in that capacity, he "manage[s] the natural gas distribution operations" of Bay State. Exh. BSC/DGC-1, p. 1. Even more than Mr. Bryant, he is directly responsible for distribution system operations. Certainly, Local 273 would never suggest that any party, either Mr. Cote or Local 273, anticipated the tragic incident in Attleboro. But there is a clear pattern in the record of this case that Bay State and NiSource can be so zealous in their desire to cut costs so as not to give proper and countervailing consideration to service quality, the need to make investments in the system, and public safety. This problem of Bay State and NiSource emphasizing cost-cutting over other considerations has been shown, *supra*, in regard to the Springfield call center and telephone service quality; it certainly was an issue in terms of hiring Central Locating; and, as detailed below, is a serious problem in terms of NiSource's plans to outsource the call center and billing functions now performed in Massachusetts.

### **3. The Mergers/Acquisitions Have Pulled Needed Resources Away From Massachusetts**

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<sup>31</sup> On cross-examination, Mr. Cote was able to identify Mr. Leary and Mr. Friary, who were sitting in the hearing room, and he recalled that they "raise[d] objections to the choice of Central Locating Service based on safety grounds." Tr. 468. He did not remember all of the details of the discussion, although he did "remember a general discussion that indicated that Contract [sic - 'Central'] Locating would place the system at greater risk." Tr. 469-470.

According to Mr. Bryant, Bay State's merger with then-NIPSCO (see DTE 98-31) and the subsequent NiSource acquisition of Columbia Gas has been nothing but good news for Bay State customers. But the actual evidence in this case shows that Bay State customers have surrendered control of their destinies to NiSource officers who have disinvested in staff, system infrastructure and operations. Given these facts, the Department cannot reward Bay State with a return on common equity that is commensurate with a well-managed company but should instead award Bay State a return at the low end of the range of reasonableness.

NiSource's acquisition of Columbia in 2000 increased long-term debt from approximately \$2.9 billion to \$8.7 billion. Exh. RR-UWUA-8. "As a result . . . NiSource's debt ratio rose to about 70% in the year following the purchase. . . . NiSource was forced to undertake numerous cost-cutting measures, including, evidently, holding off on staff additions as long as possible." Exh. UWUA-4, p. 18 (Brockway). Viewing the almost 1,000 pages of materials provided by the Company in response to Exh. UWUA 1-2 regarding staffing decreases and outsourcing, it appears that Bay State and NiSource were consumed with the drive to reduce staff beginning in 2000.

On December 7, 2001, roughly one year after the Columbia acquisition, NiSource CEO Gary Neale reported disappointing financial results and announced a virtual hiring freeze: "All hiring will be put on hold. Any vacancies that occur cannot be filled unless approved by the Management Council." Exh. USWA-1 (Ajar testimony), appended USWA-JA-1; *see also* Tr. 2010. Mr. Neale's memo also made it clear that operating budgets would be reduced, and that the company "will also need to reduce the workforce." *Id.* The financial pressures leading to these drastic actions had nothing to do with Bay State's own operations and everything to do

with the expensive acquisition of Columbia.

By 2001, NiSource was clearly exercising direct control over hiring decisions at Bay State. Tr. 1626-1627. Neither Mr. Bryant nor Mr. Cote could directly authorize the filling of new positions, regardless of the need. Exh. UWUA 3-42, Tr. 501 (regarding Mr. Cote's lack of authority to hire new workers); Exh. UWUA 1-2(D), pp.1, 3, 9, 12 & Tr. 211-212 (regarding Mr. Bryant's repeated but often futile efforts to get more call center staff). At that point, none of Bay State's Massachusetts-based executives controlled hiring. Mr. Bryant "was not [even] consulted" about the decision to cut call center staff at that time. Tr. 213-214.

Once NiSource took over, the parent company's zeal to cut costs affected every area of operations. As Mr. Cote admitted regarding physical workers:

[I]f you look at our employee rates, there was a dip in 2002 and 2003 in the number of production workers or field employees, and in early 2004 we recognized, frankly, that the reductions that had occurred during the consolidation of NiSource had gone a little too deep, and we hired people back.

Tr. 309; *see also* Tr. 1626 (Bryant: "if it [staffing] stayed at that level, over the long run the company would have had a difficult time doing such things as repairing all leaks<sup>32</sup>").

Ms. Brockway testified that the Company's capital investments for the period 2000 to 2003 were more than one-third lower than what they had been in the prior four year period of 1996 to 1999. Exh. UWUA-4, p. 24. Her conclusion was drawn directly from the Company's own service quality filings,<sup>33</sup> which show that "capital investment completed" stayed within the range of \$27.6 million to \$33.7 million between 2000 and 2003, but was in the much higher

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<sup>32</sup> Bay State had 106 open Class 2 leaks at year-end 2003. Tr. 2385.

<sup>33</sup> E.g., Exh. DTE-1 (2004 SQ reports), docket DTE 05-12, Section Two, Page 2 "BSG Capital Spending History."

range of \$35.9 million to \$67.7 million between 1996 and 1999. Even if the Department focuses only on “capital investment related to system maintenance - replacements,” this shows a consistent downward trend from \$10.4 million in 1998 to \$7.8 million in 2003, with a significant increase in 2004 — not coincidentally, the Company’s test year.<sup>34</sup>

There is other evidence of the major cut backs in terms of dollars invested in the distribution infrastructure and replacement of mains. Exh. UWUA 1-27 shows that the “footage of main installed” dropped 60%, from 425,706 in 1998 to 172,237 in 2002, and only began increasing again as the test year of 2004 approached. “Footage replaced” increased to 268,807 in 2004 (the test year), but this was still well below the amounts replaced annually from 1998 to 2001.

Bay State’s merger with NiSource has also hurt the Company in terms of its bond-rating. Mr. Simpson had testified on behalf of Bay State in the merger case that “Bay State’s financial position is likely to improve” through its affiliation with NiSource. Exh. UWUA-4, p. 59. As with many of the representations the Company made in DTE 98-31, this turned out not to be true. “By 2002, Bay State’s bonds had been downgraded three notches since its merger with NiSource, on account of the weakness of the parent company.” *Id.*

On balance, Bay State’s merger with NiSource has created a management structure that pays insufficient heed to the needs of Massachusetts customers and which has demonstrated a tendency to deprive the Massachusetts operating company of needed human and capital

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<sup>34</sup> *Id.*; see also Exh. UWUA 1-13 (a 2), Page 1 (showing 1998 as peak year for repairing leaks in service lines) & Tr. 2391; UWUA 1-13(b), Page 1 (showing 1997 as the peak for “units” [footage] of “new mains installed”); UWUA 1-13(b), Page 2 (showing 1997 as peak year for “units” of “Replacement Mains” installed).

resources, except in the period immediately preceding the filing of this rate case. In effect, NiSource is gaming the system, stinting on resources while a rate cap is in effect; expanding resources in the lead up to filing a rate case — and then, Local 273 predicts, once again putting on the brakes once the rate hike is approved.

Ms. Brockway concluded that “Bay State will continue to be vulnerable to actions taken at the parent company level for strategic reasons unrelated to, and potentially in conflict with, the needs of its Massachusetts customers.” Exh. UWUA-4, p. 60. She added that “a regulatory commission may need to be especially vigorous in order to command management’s attentions” when “a utility [i.e., Bay State] is owned by an out-of-state holding company, and when the utility is a relatively small part of the overall enterprise.” *Id.* In particular, she recommended “that the Department set the Bay State allowed return on equity at the low end of the range of reasonable returns.” Exh. UWUA-4, p. 62.

#### **4. The Company Does Not Well-Serve Its Low-Income Customers**

Bay State company has a reputation in the low-income community as one that does not serve its low-income customers well. Ms. Brockway testified:

Bay State Gas has failed to offer its low-income customers the same level of protections and services that low-income customers of other Massachusetts energy utilities can use to help maintain adequate heating and water heating.

Exh. UWUA-4, p. 47. For example, more than two years ago KeySpan developed an arrearage program on its own, which was approved by the Department in that company’s last rate case, DTE 03-40. Bay State currently has no such program.<sup>35</sup>

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<sup>35</sup> See *Boston Gas Co.*, DTE 03-40 (2003), pp. 508-511. Despite the Department’s efforts to “encourage[] all gas and electric companies to explore the implementation of low-income assistance programs similar to On-Track,” *id.*, p. 511, Bay State had not done so as of the

Ms. Brockway also testified that in her capacity as a consultant to the Low-Income Energy Affordability Network (“LEAN”), she is aware of “numerous complaints about the difficulties in dealing with Bay State on issues around the Company’s low-income efficiency programming.” She noted that Bay State does not have a “lead vendor for low-income efficiency efforts, unlike other Massachusetts utilities,” which impedes the effective delivery of the low-income energy efficiency programs. She also noted that “Bay State Gas has not proposed to offer heating system replacement, unlike the other Massachusetts utilities,” which can interfere with a low-income client’s ability to fully benefit from the state’s “federally-funded heating system program, HEARTWAP.” Exh. UWUA-4, pp. 50-51.

The Bench asked Ms. Brockway, “where does Bay State lie in comparison to other utilities in Massachusetts with regard to low-income programs?” Her clear answer: “Pretty much at the bottom . . . [I]t’s been late to come to the table, it’s been late to offer programs, it’s been difficult to deal with.” Tr. 2677.

There are a few final problems for low-income customers that should be noted here. Recently, Bay State decided that it would no longer accept last-minute payments from customers as a means of averting termination. Previously, a customer could avert a shut-off even as the company employee was about to turn the meter off, if the customer had the money to pay. This is no longer the case. Exh. UWUA 1-15. While the Company believes this is good policy, this new policy “will create particular hardship for low-income customers.” Exh. UWUA-4, p. 49.

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filing of this case. Local 273 understands that Bay State has reached an agreement with the intervenors MASSCAP et al. which provides for an arrearage program to begin by November 1. Exh. UWUA 2-16. Notably, that agreement was reached two years after the decision in DTE 03-40 and only with the impetus of MASSCAP intervening in this case.

There are many customers who “live from paycheck to paycheck, and from hand to mouth,” and these customers often cannot pay their bills on time. “It is not sound regulatory policy to punish low-income customers with harsh practices such as the denial of field collection.” *Id.*

The company does not make it easy for its low-income and elderly customers to make payments. Walk-in centers have been closed in some of the poorest cities in Bay State’s territory: Brockton, Springfield, and Lawrence, all cities with large minority populations who may have limited access to banking services and checking accounts, and for whom a walk-in center is a real benefit. (*See* section IV.C.1., *supra*). If those customers want to pay by credit card, the Company does not accept credit cards but instead uses a third-party vendor who charges exorbitant fees. Exh. UWUA 2-15. The fees can be a very large percentage of the actual bill owed, Tr. 2021-2022.

Bay State’s subpar performance in meeting the needs of its low-income customers is yet another reason to award the Company a return at the low end of the range of reasonable returns.<sup>36</sup>

##### **5. Local 273 Recommends an Allowed Return on Common Equity of 8.16%**

The Attorney General’s witness Timothy Newhard recommends that the allowed return on common equity be set at 8.66%. Exh. AG-8, p. 1. Local 273 defers to the brief of the Attorney General for supporting arguments as to why this is a reasonable return for a prudent and well-managed company.

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<sup>36</sup> Regarding certain actions that affect all customers regardless of income, the Company in 2003 discontinued the practices of dispatchers calling ahead so the customer knows that a service employee is on the way; letting customers know in advance that a company employee will show up either a.m. or p.m. (rather than at any time of day); and letting customers know by phone that a service employee will be missing an appointment. As Mr. Bryant noted, “It does not seem like we are heading in a direction of improving customer service.” Exh. UWUA 1-2(D), Page 14.

Mr. Newhard's recommendation does not include any reflection or adjustment for the quality of the company's management, Tr. 2847-2848. According to Mr. Newhard, were the Department to find imprudence on the part of Bay State's management, it would be appropriate to make a downward adjustment to his recommendation. *Id.* This is in fact consistent with the approach followed by the Department in the *Fitchburg* case, DTE 02-24/25 (2003), discussed in section IV.A, *supra*.

Local 273 recommends that the Department set the allowed return 50 basis points below Mr. Newhard's recommendation, at 8.16%, as being within the range of reasonableness but below the return commensurate for a prudent and well-managed company.

**V. THE DEPARTMENT MUST IMPLEMENT G.L. 164, §§1E & 1F AND PROHIBIT FURTHER STAFFING CUTS AT BAY STATE**

**A. Introduction**

In 1997, the General Court set in motion a major reorganization of how Massachusetts electric and gas companies are structured and regulated. St. 1997, Ch. 164 ("Restructuring Act"). A key component of the Restructuring Act is the requirement that the "department shall establish service quality standards" for all regulated companies that "shall include benchmarks for employee staff levels." G.L. ch. 164, § 1E (a). As of yet, the Department has not set enforceable (or enforced) benchmark staffing levels for any electric or gas company.

Local 273, in conjunction with other Massachusetts locals of the Utility Workers Union of America ("UWUA"), has extensively briefed the Department's obligations to establish benchmark staffing levels for all regulated electric and gas companies.<sup>37</sup> While Local 273 and

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<sup>37</sup> See, e.g., Initial Comments of the Utility Workers Union of America and UWUA Locals 273, 369 and 654 in docket 04-116 (March 1, 2005).

UWUA have raised concerns in various dockets about staffing at several Massachusetts companies, no company in Massachusetts has slashed its staff anywhere near as deeply as Bay State has done since passage of the Restructuring Act, and no company has so impaired its service as a result of cutting staff. NiSource's uniquely relentless drive to eliminate staff calls for a unique response by the Department. The Department should not and cannot postpone action regarding Bay State's staffing levels to some other day or some other docket. The current record cries out for the Department to issue an order that Bay State cannot reduce its staff any further, until the Department establishes firm, enforceable (and enforced) staffing level benchmarks for the Company. In response to Local 273's Motion to Preserve Status Quo, the Company has already agreed "that it will not move forward with any plans to outsource the jobs of current Bay State employees, or eliminate any positions or reduce the current staffing levels in connection with the pending outsourcing plans," excluding "12 NiSource Corporate Services Company employees" who were rebadged as "IBM employees on or about July 1."<sup>38</sup> In the final order in this case, the Department should extend the moratorium on reducing staff until the Department has the opportunity to investigate, determine and formally adopt the appropriate benchmark staffing levels for this Company.

**B. The Company Has Already Engaged in Massive Cuts That Have Degraded Service Quality, and Planned Cuts Will Degrade Service Further**

Bay State has engaged in massive layoffs starting around 1998, despite the

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<sup>38</sup> June 30, 2005 letter from Steve Bryant to Kevin Friary, filed with the Department by Local 273 on August 5, 2005.

representations of the Company in DTE 98-31 that it did not “anticipate that any job losses will result from this merger” with NIPSCO/NiSource. Exh. UWUA-4, p. 45 (quoting Bay State witness James Simpson). In Exh. UWUA 1-1(A), the “total head count” for 1998 is listed as 811, while the head count in 2003 is shown as 509, representing a 37% cut in staff. In Exh. AG 1-44 (reproduced as an attachment to Ms. Brockway’s testimony as NB-1), the Company reported the number of employees as 861 in 1998 and 529 at year-end 2003, representing a 38% drop in staff.<sup>39</sup> The non-union head count has declined much more than the union head count, Exh. AG 1-44, as NiSource faces fewer restraints on eliminating non-union staff. Local 273 believes that staffing cuts on both the union and non-union payrolls have impaired service quality and urges the Department to address both.<sup>40</sup>

The Company’s top officers readily agree that their current employees are highly skilled and experienced, and that experience matters. On average, current employees have worked for the Company between 10 and 20 years, depending on the department. Exh. UWUA 1-35. Mr. Cote emphasized the crucial role that experienced employees play when it comes to “[e]mergency response to things like third-party damage and underground leakage,” Tr. 2383-2384. Mr. Bryant testified that “there is a clear value in having experienced employees,”

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<sup>39</sup> Staffing started increasing in February 2004 through February 2005, a period that includes 11 months of the Company’s test year, then declined again in March 2005, just prior to the rate case filing. Exh. AG 1-44, Page 2.

<sup>40</sup> Local 273 does not believe that the staffing level requirements of G.L. ch. 164, § 1E are applicable only to union payrolls. However, to the extent the Company may so argue, the Department has already ruled that “[t]here are . . . multiple sources of the Department’s authority to investigate a distribution company’s staffing levels and to include an SQ measure for staffing levels,” including the Department’s “broad and supervisory powers over distribution companies pursuant to G.L. ch. 164, §§ 76 and 93.” Letter Ruling, DTE 99-84 (May 28, 2002). The Department clearly can regulate non-union staff levels.

referring to both physical and clerical workers. Tr. 1924-1926.

As discussed at length in section IV, *supra*, staffing cuts clearly were a major cause of the decline in telephone service quality and also may have impaired other aspects of the Company's operations. The Department should not allow any further staff declines unless and until the Department adopts firm and enforceable benchmark staffing levels for Bay State. This is in fact far less than the Restructuring Act requires.<sup>41</sup> This requested ruling is particularly urgent in light of past declines in service quality related to staffing cuts, and the Company's plans to outsource to IBM over 100 jobs currently housed at the Springfield call center and Brockton billing office.

As Ms. Brockway testified:

[I]t is reasonable to question whether Bay State has cut too deeply into its staffing. Bay State has recently announced that it intends to "outsource" significant components of its business to IBM . . . This approach to fulfilling its obligations as a gas utility is likely to put added stress on resources that are already overly constrained, puts core utility functions under the control of independent contractors, will introduce a need to train up new contract staff, and may well lead to further difficulties in meeting customer service and plant investment requirements.

Exh. UWUA-4, p. 32.

**C. NiSource Now Controls All Staffing Decisions and Subordinates Service Quality to Its Cost-Cutting Goals**

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<sup>41</sup> Under the Act, the Company should be prohibited from "engag[ing] in labor displacement or reductions below staffing levels in existence on November 1, 1997." G.L. ch. 164, § 1E (b).

From 1999 through 2004, Bay State, which was a NiSource subsidiary throughout that period, operated under a rate freeze. *Bay State Gas Company*, DTE 98-31 (1998), pp. 16-19. NiSource had every financial incentive to cut costs drastically, as the cost-savings would inure to its shareholders, and it did so with a passion unrivaled by any other Massachusetts distribution company. See sub-section B., *supra*. NiSource unquestionably controls all staffing decisions. Mr. Bryant, the top Company executive in Massachusetts, does not have veto power over NiSource's layoff decisions. Tr. 207-208. He cannot add new positions, even at the lowest levels of the Company. See, e.g., Tr. 1656 ("there's no one within Bay State, who's employed by Bay State, who has a role in determining staffing levels at the call center"); Exh. UWUA 1-24(D), Page 3 of 24. He was not even consulted about past decisions to reduce staff. Tr. 213-214. He has "been out of the loop a little bit" regarding the the IBM contract, Tr. 182, even though this contract will have major impacts on Bay State's staffing and operations.

The Department must anticipate that the past is prologue for the future. While NiSource (through its subsidiary Bay State) operated under a rate cap, it exhibited a clear pattern of cutting costs to the point of adversely impacting telephone service and other operations while also providing inferior service to low-income customers. See section IV., *supra*. Shortly after filing the present case, NiSource publicly boasted of its plans to lay off another 1,000 or so workers system-wide, with 100 Massachusetts employees at the Springfield call center and Brockton billing office at risk of losing their jobs. See June 21, 2005, press release, "NiSource and IBM sign agreement to transform key business process and technology functions" (filed by the Company on June 21, 2005) and "Affidavit For Kevin Friary," attached to Local 273 Motion to Preserve Status Quo (June 13, 2005). The Department must halt these impending layoffs, to

carry out the staffing benchmark requirements of G.L. ch. 164, § 1E and protect service quality.

**D. There is Little Evidence That the IBM Contract Will Benefit Customers and Reason to Be Concerned It Will Cause Substantial Harm**

NiSource has already signed the outsourcing contract with IBM. However, the Department still is able and obliged to determine whether the planned outsourcing of jobs is in the best interests of ratepayers. NiSource has announced that “it expects 572 employees company-wide to move to IBM, and that it will cut 445 jobs by the end of 2006. The total represents about 12% of NiSource’s 8500 workforce.” Exh. UWUA-4, p. 34. Of greatest relevance for Bay State’s customers, “at least 100 workers in Massachusetts are subject to job termination or being offered positions with IBM.” *Id.*, p. 35.

The outsourcing plan, if implemented, will have a major impact on Bay State’s current operational structure. Pat Teague, manager of the Springfield call center informed Jody Ajar “that the Company wanted to outsource the entire Call Center,” although the Company intends to go through the motions of meeting with USWA before proceeding with this plan.<sup>42</sup> Exh. USWA-1, p. 16. NiSource has formally announced that “IBM [proposes] to consolidate work from our New England customer contact center (at Springfield, Mass.) into our Smithfield, Pa. customer contact center.” Exh. USWA-1, attachment USWA-JA-3. The Department should not be misled by any attempts of the Company to obfuscate this issue. The call center will almost certainly move to Smithfield (or elsewhere) unless the Department intervenes.

Should the call center move out of state, the current employees will suffer quite

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<sup>42</sup> Under *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203 (1964), the Company is required to “bargain” with Local 273 and USWA regarding its intent to outsource jobs. *Fibreboard* also clearly establishes that NiSource is under no obligation to yield on any aspect of its outsourcing plans nor is there any evidence that it intends to change those plans.

substantial harm. Ms. Ajar testified that “90% of the bargaining unit members are women . . . . [and] 52 of the 69 Union members on staff are primary breadwinners and sole source for health insurance for their families.” Exh. USWA-1, p. 18. In the Springfield area, “there are few, if any comparable jobs” that any displaced workers would be able to find. Exh. USWA-1, p. 18. The impacts on employees at the Brockton billing center would be equally severe. The Brockton location employs approximately 35 people, and the NiSource-IBM contract contemplates that those jobs will be outsourced. Tr. 190-191.

There is little in the record that could give the Department any comfort that outsourcing the call center and billing functions will provide any benefits to customers, if only because the Company’s witnesses are not familiar with the IBM contract provisions. As of July 5, 2005, Mr. Bryant could not definitely say whether NiSource and IBM had in fact signed a contract on June 21. Tr. 182. He professed being “out of the loop a little regarding ongoing general business matters in NiSource.” *Id.* He was not closely involved in the negotiation leading up to the signing of the contract, Tr. 182; will not be involved in the negotiations between NiSource and its Massachusetts unions over which particular jobs will be outsourced, Tr. 1696-1697; and at least as of August 4 had not reviewed any documents demonstrating that NiSource had performed its due diligence in selecting IBM, Tr. 3333. He had not seen the contract before it was signed, Tr. 3235. Even as of August 24, 2005, he had “not received any documents regarding IBM’s administration, or proposed administration of the Smithfield, PA call center,” Exh. RR-USWA-11; nor as of August 24 “had [he] received any information regarding the IBM or Vertex management of call centers at other companies that have chosen to outsource with either company,” Exh. RR-USWA-13. Ms. Teague, the call center manager, was not consulted

about the potential for the call center to be outsourced. Tr. 3157. Rather, she was only “informed that they [NiSource] have made a decision to consolidate the contact centers and that a proposal was on the table from IBM to consolidate the Bay State Gas contact center into Smithfield, Pennsylvania,” Tr. 3159-3160.

NiSource is now clearly in control of service quality for Bay State’s customers. Mr. Bryant relies on Violet Sistovaris at NiSource to address issues of training the new employees who will handle the outsourced work and ensuring service quality, Tr. 197, yet this is the same Ms. Sistovaris who may have been responsible for the previous cuts at the call center and who Mr. Bryant had to beseech in order to restore staffing levels at the Springfield call center. *See, e.g.,* Exh. UWUA 1-2(D), Pages 3 and 4 of 24. There is little reason to believe Ms. Sistovaris or other out-of-state NiSource executives will strike a reasonable balance between their ongoing plans to cut staff and their obligation to deliver high-quality service in Massachusetts.

There is thus virtually no evidence to demonstrate that outsourcing the call center and billing functions will improve service quality. To the contrary, there are many reasons why the Department should be concerned that the NiSource-IBM outsourcing initiative will in fact turn out badly. Ms. Brockway reviewed in her testimony some of the adverse outcomes that have occurred when other large companies outsourced key customer service functions, including to IBM itself. Exh. UWUA-4, pp. 36-41. At TXU, a Texas utility, “outsourc[ing] customer service has facilitated a policy of aggressive service terminations, and the effort to drop customers who are perceived as bad credit risks.” *Id.*, p. 36. Outsourcing of credit and collections inevitably creates a dynamic where the provider (here, IBM) wishes to impress the purchaser (here, NiSource) with how aggressive it can be in collecting overdue amounts, and where front-line

employees based in other states (or countries) inevitably feel less sympathy for the customers and less commitment to complying with some distant regulator's regulations. As Ms. Brockway put it, "outsourcing significantly weakens control over the performance of the functions outsourced . . . such massive outsourcing demonstrates a lack of commitment by the utility to maintaining quality services to its customers." *Id.*, p. 37.

Ms. Brockway pointed to "a number of outsourcing deals of similar magnitude [that] have fallen through," *id.*, p. 38, including a \$5 billion major outsourcing contract between JPMorgan and IBM which JPMorgan cancelled two years into a seven year contract; a cancelled outsourcing contract between Sears, Roebuck and Computer Sciences Corp.; a cancelled contract between Bank of Scotland and IBM; a cancelled contract between Bank One and IBM; and a cancelled \$3 billion contract between Cable & Wireless and IBM. *Id.*, p. 39. The alleged reasons for terminating the outsourcing contracts with IBM included violating the terms of the agreement; overcharging (in the case of the Cable & Wireless-IBM contract); the contract not working out well for the purchaser; and the belief that "bringing these functions back into the firm" would benefit the business and its customers. *Id.*, pp. 39-41. There is thus extensive record evidence regarding how major outsourcing contracts with IBM have failed, and no evidence about how they have succeeded. In fact, when Mr. Bryant was asked whether he was aware of "any studies of any kind . . . looking at the performance of outsourced call centers," he replied, "No, I am not." Tr. 214. There is simply no record to support NiSource's belief that outsourcing Bay State's call center or billing functions to IBM will work out well for Bay State's customers, even though this may cut NiSource's expenditures on staff and increase earnings for

shareholders.<sup>43</sup>

Outsourcing has worked out so poorly for so many firms that there is now a reverse trend of “insourcing,” that is, firms that previously outsourced now bringing the outsourced functions back in house. “[A]s many as 64 per cent of firms have already brought an outsourced service back in-house.” Exh. UWUA-4, p. 43. Further, “eighty percent of firms already in an outsourcing deal have renegotiated the deal,” and firms are avoiding signing the type of long-term outsourcing contract that NiSource signed with IBM. Exh. UWUA-1, p. 43.<sup>44</sup>

Should NiSource sour on its arrangement with IBM, or even should the Department at some later date decide that the contract is not in the best interest of ratepayers, NiSource (and therefore Bay State and its customers) will incur quite substantial penalties. In any long-term outsourcing arrangement, “the contract cancellation fees can be quite large and as a result disputes over contract cancellation can become litigious and difficult to resolve.” Exh. UWUA-4, p. 40. But Mr. Bryant had not even considered those costs.<sup>45</sup>

There will also be non-monetary costs of outsourcing that are hard to quantify but extremely important to customers. “In the case of utility services, particularly those involving direct customer contact, the contract provider may not always be relied on to follow through with

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<sup>43</sup> Since Bay State is proposing a PBR, any cost savings would likely inure to shareholders, not ratepayers.

<sup>44</sup> After the record in this case closed, the Boston Globe ran a front-page story on August 20, “Overseas service calls come home — Backlash over quality of centers,” discussing this insourcing phenomenon.

<sup>45</sup> This is reasonably clear from the discussion at Tr. 3271-3277. The Company eventually provided a confidential response to RR-AG-81 regarding termination costs. Local 273 discusses that response and Mr. Bryant’s confidential testimony regarding the IBM contract in a sealed portion of its brief, *infra*.

the same commitment to the public service goals of the firm as the utility's own employees.”

Exh. UWUA-4, p. 41. A typical customer-call scenario will illustrate this point. Massachusetts has a very high cost of living and very generous rules relating to payment plans, serious illness and infant protections, etc., in 220 CMR Part 25.00. A customer service representative (“CSR”) whose primary loyalty is to IBM (or an IBM sub-contractor) and who is based in a low-cost state or foreign country that has limited or no consumer protections simply will be less receptive than a Massachusetts-based CSR to a caller who says, “I’m sorry, but I only make \$1,800 a month and I can barely pay my rent as it is. Could I have four months to repay that bill?” In many states and certainly outside the United States, \$1,800 a month might seem a comfortable income, and a four-month payment plan might seem far too generous.<sup>46</sup> This prosaic example highlights the important but hard-to-quantify value of locally-based CSRs, especially in connection with credit and collection calls. The reality is that Bay State’s Massachusetts-based CSRs are not only fully trained, they are highly experienced and familiar with the high cost of living here, the scope of consumer protection rules, and the Department’s policies. It is simply not possible that a recently-employed CSR based in another state or country will deliver the same level of customer service.

**NOTE: The following several paragraphs of the brief cite confidential materials and are being provided to the Department, the Attorney General and USWA only.**

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<sup>46</sup> In fact, the Company would be obliged to offer a payment plan “over a **minimum** of four months,” under 220 CMR 25.01, definition of “payment plan” (emphasis added).

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In addition to evoking some of the worst aspects of the Metscan deal, this NiSource-IBM contract is also evocative of Bay State's representations to the Department in DTE 98-31 that ultimately proved quite untrue. Now, NiSource is promising that the contract with IBM will provide more efficient service to Bay State's customers while also lowering costs, much like it promised in DTE 98-31 that the merger would likely have no impact on operations or staffing. It

is easy for NiSource to promise that the IBM contract will benefit Massachusetts ratepayers; it will be virtually impossible to protect those ratepayers from incurring quite substantial costs if the deal does not work out well. There is precious little evidence in the record to back up NiSource's representations and substantial evidence that this type of outsourcing arrangement will eventually go sour and impair service quality. There is no doubt that Bay State will then be at the Department's door seeking rate relief for any cancellation fees. The Department should not tolerate such a scenario.

**E. The Department Must Not Allow Further Layoffs, as a Matter of Law and of Sound Regulatory Policy**

Local 273 and other UWUA locals have long argued that the Department must adopt a staffing level benchmark that fully complies with the statutory mandates of G.L. ch. 164, §§ 1E (a) & (b), 1F(7).<sup>47</sup> The law could not be clearer that the Department must adopt staffing level benchmarks:

. . . [T]he department shall establish service quality standards for each distribution, transmission and gas company, including, but not limited to, standards for customer satisfaction [,] service outages, distribution facility upgrades, repairs and maintenance, telephone service, billing service, and public safety, **provide, however, that such service quality standards shall include benchmarks for employee staff levels and employee training programs for each distribution, transmission and gas company.**

G. L. ch. 164, § 1E (a).

In complying with the service quality standards and employee benchmarks established pursuant to this section, a distribution, transmission or gas company that makes a

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<sup>47</sup> In the initial service quality docket, DTE 99-84, UWUA filed comments on staffing level benchmarks throughout the proceeding: Initial Comments (Dec. 3, 1999), pp. 28-29; Reply Comments (Dec. 12, 1999), pp. 6-7; Further Comments (Dec. 13, 2000), pp. 7-8; UWUA letter dated July 19, 2001; Opposition to Bay State Motion (Oct. 31, 2001) (opposing Bay State's request that it not be required to file benchmark staffing levels); UWUA letter comments on Bay State SQ filings (Nov. 14, 2001), p. 2.

performance based rate filing after the effective date of this act **shall not be allowed to engage in labor displacement or reductions below staffing levels in existence on November 1, 1997**, unless such are part of a collective bargaining agreement . . . or with the approval of the department following an evidentiary hearing at which **the burden shall be upon the company to demonstrate that such staffing reductions shall not adversely disrupt service quality standards . . . .**

G.L. ch. 164, § 1E (b) (emphasis added).

Bay State has made a “performance based rate filing after the effective date of this act,” as Mr. Bryant acknowledged, Tr. 1920, just as he acknowledged that current staffing levels are approximately 30% below 1997 levels, Tr. 1921. The Company has offered no evidence that any staff reductions are “part of a collective bargaining agreement.”<sup>48</sup> It is also clear that the Company has not met its burden of proving that staffing reductions have not affected and will not continue to affect service quality. *See* sections IV.C and V.B. to V.D, *supra*.

While the legal mandate to establish “benchmarks for employee staff levels” has been on the books for more than seven years, the Department has not set enforceable, numerical benchmarks for any company.<sup>49</sup> The record in this case cries out for action by the Department to set benchmark staffing levels for Bay State in particular. In its final order in this case, the

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<sup>48</sup> The Company did not introduce the collective bargaining into the record, and Ms. Ajar testified that the USWA contract actually prohibits outsourcing of jobs covered by that agreement. Exh. USWA-1, pp. 17-18.

<sup>49</sup> The Department in one case deferred the setting of benchmark staffing levels to an “appropriate” but unspecified “forum where interested parties may participate,” *Boston Gas Company*, DTE 03-40 (2003), p. 506. The Department has adopted generic staffing level benchmark language, but that language is somewhat vague. *See* DTE 99-84-B (Sept. 29, 2001), pp. 12-13 (directing companies “to submit SQ plans with staffing level benchmarks based on staffing levels in existence on November 1, 1997, except as provided by collective bargaining agreements or other statutory provisions”). The Department has taken no action against any of the companies whose staffing levels are below “staffing levels in existence on November 1, 1997.”

Department should prohibit further staffing cuts at Bay State among physical workers, the call center or billing staff, pending a full investigation of the staffing levels required to provide adequate service quality and the formal adoption of firm, enforceable staffing level benchmarks.<sup>50</sup> This is quite a minimal step given the mandate to set benchmark staffing based on November 1, 1997 levels and the fact that Bay State's current staffing levels are already one-third below 1997 levels.

In 2002, Bay State specifically requested that the Department issue a ruling that "staffing level benchmarks based on staffing levels in existence on November 1, 1997" would not apply to it.<sup>51</sup> The Department soundly rejected the request, noting:

There are . . . multiple sources of the Department's authority to investigate a distribution company's staffing levels and include an SQ measure for staffing levels. First, the Department has broad and supervisory powers over distribution companies pursuant to G.L. c. 164, §§ 76 and 93. This includes the power to insure that distribution companies retain sufficient numbers of employees to guarantee a safe and secure supply of gas and electricity and to provide adequate customer service. In addition, G.L. c. 164, § 1F(7) directs the Department to oversee quality and reliability of service . . . . Section 1F(7) also gives the Department authority apart from § 1E to establish SQ standards, including standards for customer satisfaction, service outages and public and employee safety.

Letter Ruling, DTE 99-84 (May 28, 2002), p. 4. Thus, the Department has both the obligation under G.L. ch. 164, §1E to set benchmark staffing levels and the discretion under §§ 1F(7) and 76 to take all appropriate steps to ensure high-quality service to customers.

The Department has made it clear in any number of rulings and actions that it is loath to implement the requirements of G.L. ch 164, § 1E in terms of actually adopting and enforcing

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<sup>50</sup> As noted previously, the Company has already agreed to freeze staffing cuts pending the outcome of this case. June 30, 2005 letter from Steve Bryant to Kevin Friary (filed by Local 273 on August 5, 2005).

<sup>51</sup> Motion for Clarification by the Bay State Gas Company, DTE 99-84 (Oct. 22, 2001).

numerical staffing level requirements for all regulated companies. *See, e.g., Boston Gas Co.*, DTE 03-40 (2003), p. 504; *Berkshire Gas Company*, DTE 03-11 (Department has still not ruled on Attorney General's Motion for Reconsideration regarding Berkshire's alleged violation of staffing level requirements); Letter Ruling in 2003 Service Quality Reports, DTE 04-12 through DTE 04-25 (Oct. 22, 2004) (Department does not address requests of Local 273 and Attorney General to set staffing level requirements). But the Department need not generically address the issue of adopting staffing levels for all companies in Massachusetts in order to properly address the unique and urgent situation at Bay State. Bay State has cut its staffing levels by 30% and more, far more than any other company in the state. Those staffing cuts have clearly affected service quality. The Company is poised to embark on another major round of staffing reductions as it implements the NiSource-IBM contract. The Department must act now, as a matter of sound regulatory policy and in order to protect Bay State's customers. The Department is legally obliged to act under G.L. ch. 164, § 1E.

## **VI. THE DEPARTMENT SHOULD ORDER A MANAGEMENT AUDIT OF BAY STATE**

Local 273 recommends that the Department order a management of Bay State, focusing on (i) whether there are sufficient Massachusetts-based managers to properly manage the Company and deliver high-quality, safe and dependable service, including whether those managers have sufficient ability to obtain from the parent corporation the staff and capital resources they need to deliver high-quality, safe and dependable service; (ii) whether there are adequate staff to answer telephone inquiries; perform all billing-related functions; and inspect, maintain and repair the infrastructure; (iii) the extent to which outsourcing of jobs to NiSource

poses a risk of degradations in service quality and whether the contract adequately protects Bay State ratepayers from picking up excessive, unnecessary or inappropriate costs. The reasons for requesting such an audit are detailed in sections IV and V, *supra*.

## **VII. COST OF SERVICE ISSUES**

### **A. The Westborough Lease Costs are Excessive and Should be Reduced**

Bay State has long maintained a corporate headquarters in Westborough, Massachusetts. In its merger proceeding, the Company represented that it “would maintain its Westborough headquarters” after the merger. DTE 98-31. While this has proved true in the literal sense that the Company has not formally closed the headquarters, the headquarters is a virtual ghost town compared to its pre-merger status. As portrayed by the Company in Exh. UWUA 1-1(B), the Westborough headquarters housed 190 “full time and part time regular employees” in 1998 and only 22 such employees in the test year (increasing to 26 in 2005), a decline of almost 90%. As the Bench (Mr. Osborne) noted during cross-examination, “there are about as many Bay State employees in Westborough right now as there are people in this room, approximately 25.” Tr. 1935.<sup>52</sup>

However, it appears that the significant decline in Bay State employees was somewhat offset by an increase in the number of NiSource Corporate Services Company (NCSC) employees housed at Westborough. According to RR-AG-2, there are currently 22 NCSC employees housed in Westborough in addition to the 26 Bay State employees reported in Exh. UWUA 1-1(B). Many of the NCSC employees are there only part-time, not full time. Tr. 1944.

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<sup>52</sup> Mr. Bryant in reply noted the building “once held . . . around 385 employees,” but he did not specify the time period when this was the case. Tr. 1935.

Because Bay State now uses only a small fraction of the Westborough space, the Company has sub-leased portions of that space. By reviewing both RR-UWUA-6 and Exh. UWUA 3-32, it is easy to derive the lease cost per employee net of sub-lease payments received. In 2000, the total annual cost of the Westborough facility, including lease payments, maintenance, repairs, cleaning, and property taxes was \$1,450,345 for 138 employees. Exh. UWUA 3-32. The Company received no sub-lease payments that year, and the net cost per employee was \$10,510. Even this figure may over-state reasonable office costs for the 138 employees, as the same facility had housed 190 employees as recently as 1998, Exh. UWUA 1-1(B). By the test year of 2004, the annual costs for the Westborough space increased to \$1,609,105, and the Company claims that it housed 55 employees.<sup>53</sup> Exh. UWUA 3-32. However, the Company also received \$179,653 in sub-lease payments, RR-UWUA-6, leaving net annual lease costs of \$1,429,452 (\$1,609,105 - \$179,653), for a per-employee cost of \$25,990. Thus, between 2000 and 2004, the Company's per employee office costs increased 2.38 times:

2000 per-employee cost	= \$10,510
2004 per-employee cost (net of sub-lease revenues)	= \$24,990
Ratio of 2004 to 2000 per-employee costs	= 2.38

This excessive increase is a direct result of NiSource's decision to drastically cut the work force at Westborough yet still maintain far more space than is needed.

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<sup>53</sup> The claim that 55 employees were housed in 2004 appears questionable, as Exh. UWUA 1-1(B) shows no more than 26 Bay State employees housed in 2004 and 2005, and RR-AG-2 reports only 22 NCSC employees housed in mid-2005. Thus, accepting the Company's 2004 employee count of 55 may understate per employee costs for 2004.

Local 273 suggests the following adjustment. Exh. UWUA 3-32 shows that the Company's total office expenses at Westborough increased only 10.95%, from \$1,450,345 to \$1,609,105 between 2000 and 2004. This increase seems perfectly reasonable, reflecting approximately a 2.5% annual increase in lease costs. Local 273 recommends that the Company be allowed to recover in its cost of service no more than 10.95% above its per-employee costs in 2000, when the Westborough space was much more fully utilized. In 2000, the per-employee cost was \$10,510; increasing this figure by a reasonable 10.95% brings the reasonable 2004 per-employee cost to \$11,661. Assuming that the Company is correct that Westborough housed 55 employees,<sup>54</sup> the reasonable office space cost would be \$641,355 (\$11,661 X 55). The Company has included in the cost of service the entire 2004 cost of the Westboro space, Tr. 1942, less the sub-lease revenues received, RR-UWUA-6. The Company should be ordered to remove any Westborough office costs above \$641,355. This is in fact a conservative approach, given that there is evidence that Westborough housed between only 44 and 48 employees in 2004 (Exh. UWUA 1-1(B) and AG-RR-2), not 55 employees, and given that even in 2000 the Company was already paying for much more space than it needed (i.e., Westborough housed 190 employees in 1998 and only 138 in 2000).

**B. The Amounts of NiSource Executive Compensation Allocated to Bay State are Excessive and Should be Disallowed in Part**

Local 273 first asked Bay State on June 17 to provide the amounts of compensation for NiSource's 20 most highly compensated executives, through information request UWUA 2-11. Despite Local 273 raising the Company's delay in answering this request repeatedly on the

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<sup>54</sup> See previous footnote.

record, and despite the Hearing Officer eventually compelling the Company to answer by August 15, the Company did not provide Local 273 with an actual response until August 17.

The Company has obtained the Department's approval that no party with access to Exh. UWUA 2-11 may reveal any executive's individual compensation. Local 273 will carefully refrain from doing so and refer only to aggregate amounts and ratios essential to its executive compensation argument. However, the Department may wish to carefully peruse the response to Exh. UWUA 2-11 to form its own conclusions about the levels of compensation of specific individuals. The Department also may wish to consider whether executive compensation should remain removed from public scrutiny, given the significant impact that executive compensation has on rates.

By reviewing Exh. UWUA 2-11(a), the Department will see that Bay State ratepayers were allocated approximately \$70,000 of the compensation provided to NiSource's 20 most highly compensated executives in 2001. Only .05% of the compensation provided to executives 10 and 11 was allocated to Bay State; 5.5% of executive 19; and just under 10% of executive 20.

By 2002, the Department will note that amounts allocated to Bay State's customers jumped substantially. The Company was then allocating between 3.85% and 11.59% of the costs of the five most highly compensated executives to Bay State's customers, and also allocating non-trivial portions of the compensation paid to executives 7, 8, 10, 11, 12, 16, 17, and 20. Exh. UWUA 2-11(B). Thus, in 2002 NiSource was allocating the costs of 13 highly-compensated executives to Bay State, totaling almost \$900,000,<sup>55</sup> whereas in 2001 it was allocating the costs

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<sup>55</sup> The Department can replicate the math by multiplying the "2002 total comp" for these 13 executives by the "% billed to BG," then summing the amounts allocated for each of the 13.

of only 4 executives for a relatively small total of approximately \$70,000. By 2004, NiSource was allocating the cost of 13 of the 20 most highly-compensated executives to Bay State, at a total cost of almost \$1.15 million. Exh. UWUA 2-11(d).

This is an extraordinary cost for Bay State's customers to bear. It is more than double the total compensation awarded to all of the highly-compensated Bay State executives who are actually based in Massachusetts. Exh. UWUA 2-11(d) (the two executives listed at the very bottom). It appears that NiSource is loading onto the backs of Bay State customers the very high compensation provided to out-of-state executives whose compensation levels have not been justified on the record. In Exh. UWUA 3-38, Local 273 asked the Company to provide any "relevant exhibits that support" that the compensation provided to Mr. Bryant, Mr. Cote and the "top executives and officers at NiSource and NiSource affiliates" are reasonable. No documentation was provided. In fact, not even the actual compensation amounts of those top NiSource executives were provided until August 17, 2005. Notably, even the scanty cross-examination that Local 273 was able to conduct regarding executive compensation revealed that the Company over-allocated \$36,000 of costs to Bay State customers in connection with the compensation of one single employee. RR-UWUA-9 (Confidential). Given the lack of evidence supporting the reasonableness of the very large compensation provided to NiSource's highly-compensated executives; given that the amounts allocated to Bay State have risen exponentially from approximately \$70,000 in 2001 to over \$1 million in the test year of 2004; and given that even the minimal cross on this topic revealed a very substantial calculation error by the Company – Local 273 recommends that the Department disallow 50% of the executive compensation included in the test year cost of service. The grounds for doing for doing so are

that the Company has not met its burden of proof in demonstrating that the levels of compensation are reasonable, nor has it met its burden of proof that the expenditures were necessary to provide service to Bay State customers.

### **VIII. THE METSCAN COSTS SHOULD BE DISALLOWED AS IMPRUDENTLY INCURRED**

In its initial filing, Bay State sought to recover significant costs, \$13.2 million, regarding its now-abandoned Metscan automated meter reading system. Exh. BSG/SHB-1, p. 45, l. 14. The Company is “unaware of any other utility in Massachusetts that currently used the Metscan system,” although it is aware of “four utilities that purchased Metscan systems.” Exh. UWUA 2-36. None of those companies serves New England.<sup>56</sup>

The Company began piloting the use of the Metscan devices in the 1980’s, with full deployment in 1991. Tr. 138-139. By the mid-1990’s, the Company was aware that the devices wore out more quickly than anticipated when exposed to actual New England weather conditions. The weathered devices would simply stop communicating. Tr. 138-140. It also turned out that installing or removing the devices frequently caused damages to customers’ phone lines, which were used to communicate metering data. Tr. 142. Exh. AG 21-3 includes ten pages of several hundred refunds totaling \$48,000 the Company made to customers between March 2002 and 2005 to reimburse customers for telephone line repairs. Tr. 141-142.

Ms. Brockway noted that Bay State chose to proceed “with a massive investment in Metscan” at a time “when the technology of automatic meter reading . . . was undergoing great

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<sup>56</sup> The Company’s list of other utilities that use Metscan includes a Canadian company (Canadian Western Natural Gas); a company that serves the Pacific northwest (NW Utilities Limited); a company that serves the Kentucky/Pennsylvania/West Virginia region (Equitable), and a company, National Fuel, which services Pennsylvania and Western New York.

changes.” Exh. UWUA-4, p. 56. The telephone-based technology for automated meter-reading is now effectively obsolete, and the Company has switched to a wireless technology sold by Itron. Tr. 158-159.

As Mr. Brockway noted, “the Company made a bet on the future of the [Metscan] technology, a bet that has not proved profitable.” Had Bay State been “more conservative and prudent,” it would not, as a relatively small utility, have taken the lead in experimenting with this unproven technology, deployed the devices so widely throughout its system, and entered into a long-term lease arrangement. Exh. UWUA-4, p. 56. Bay State needlessly put customers at too great a risk, and therefore acted imprudently.

Local 273 believes that a portion of the unrecovered Metscan investment should be absorbed by Bay State itself and not borne solely by ratepayers. However, Local 273 will defer to the brief of the Attorney General for more detailed argument regarding the recovery the Company seeks for its Metscan investment, and to the Department to determine an appropriate disallowance.

## **IX. CONCLUSION**

Local 273 asks the Department to issue an order consistent with its recommendations in this brief.

Respectfully submitted,

Charles Harak, Esq.  
Counsel for Local 273  
77 Summer Street, 10<sup>th</sup> floor  
Boston, MA 02110  
617 988-0600 (ph)  
617 523-8028 (fax)  
charak@nclc.org

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